

United States District Court
Southern District of Texas
Houston Division

DORITHY ELIZABETH SNODGRASS AMONETTE
et al.,

Plaintiffs,

vs. Civil Action 4:12-CV-1520
Case N° 1
ENCORE BANK, N. A., *etc.*

Defendant.

Encore Trust, *etc.*
Plaintiff,

vs. Civil Action 4:12-cv-01055
Case N° 2
Frances Carter Snodgrass
et al.,

Defendants.

MOTION, AND AS APPROPRIATE, RENEWED MOTION OF FRANCES CARTER SNODGRASS WALKER, DORITHY ELIZABETH SNODGRASS AMONETTE, EVANS S. AMONETTE, SAMUEL D. AMONETTE AND JACKSON T. AMONETTE TO CONSOLIDATE THESE CASES and TRAVERSE TO THE PETITIONER ENCORE TRUST'S RESPONSE TO DEFENDANT'S {SIC} MOTION TO DISMISS

To the Judges of this Honorable Court

Comes now the undersigned, for and on behalf of FRANCES CARTER SNODGRASS WALKER, DORITHY ELIZABETH SNODGRASS AMONETTE,

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EVANS S. AMONETTE, SAMUEL D. AMONETTE AND JACKSON T. AMONETTE move, and as appropriate, renew their motion to consolidate these cases, and further, traverses the *PETITIONER ENCORE TRUST'S RESPONSE TO DEFENDANT'S {SIC} MOTION TO DISMISS*, and would show this Honorable Court:

1. These proceedings were commenced when Dorothy Elizabeth Snodgrass Amonette and Frances Carter Snodgrass Walker filed their case styled *DORITHY ELIZABETH SNODGRASS AMONETTE and FRANCES CARTER SNODGRASS WALKER, also known as Frances Carter Snodgrass, Plaintiffs, vs. ENCORE BANK, N. A., a national banking association, Defendant*. It bore Case № 2012 CA 444, and was lodged in Division F In the Circuit Court of the First Judicial Circuit of Florida, In and for the County of Escambia. Hereinafter this may be referred to as the "Florida Case".

2. Thereafter, on March 5, 2012, the defendant filed its Notice of Removal and the case was removed under style *DORITHY ELIZABETH SNODGRASS AMONETTE and FRANCES CARTER SNODGRASS WALKER, also known as Frances Carter Snodgrass, Plaintiffs, vs. ENCORE BANK, N. A., a national banking association, Defendant*, to the United States District Court for the Northern District of

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Florida, Pensacola Division. It bore Case N° 3:12-CV-98-MVR-CJK. The Plaintiffs filed no objection to no motion for remand of that removal. Hereinafter this may be referred to as the "Pensacola Case", or Case N° 1 as denominated in the style, above.

3. Thereafter, the defendant in the Florida Case and the Pensacola Case filed on March 7, 2012, a case styled *Encore Trust (A Division of Encore Bank, Houston, Texas) (Formerly National Fiduciary Services, N.A.,), Co-trustee of the John C. Snodgrass Family Trust for the Benefit of Frances Carter Snodgrass Walker and the John C. Snodgrass Family Trust for the Benefit of Dorothy Elizabeth Snodgrass Amonette, Plaintiff, vs. Frances Carter Snodgrass Walker, Dorothy Elizabeth Snodgrass Amonette, Evans S. Amonette, Samuel D. Amonette and Jackson T. Amonette, Defendants.* This case bears Case No.269422-401 and was lodged in Probate Court N° Two of Harris County, Texas. Hereinafter this may be referred to as the "Texas Case".

4. Thereafter the defendants in the Texas Case which includes Frances Carter Snodgrass Walker and Dorothy Elizabeth Snodgrass Amonette along with the children of Mrs. Amonette filed a Notice of Removal of the Texas Case under style *Encore Trust (A*

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Division of Encore Bank, Houston, Texas) (Formerly National Fiduciary Services, N.A.,), Co-trustee of the John C. Snodgrass Family Trust for the Benefit of Frances Carter Snodgrass Walker and the John C. Snodgrass Family Trust for the Benefit of Dorothy Elizabeth Snodgrass Amonette, Plaintiff, vs. Frances Carter Snodgrass, Walker, Dorothy Elizabeth Snodgrass Amonette, Evans S. Amonette, Samuel D. Amonette and Jackson T. Amonette, Defendants, to the United States District Court for the Southern District of Texas, Houston Division where it bears Case No. 4:12-cv-01055. Hereinafter it may be referred to as the "Houston Case", or Case N° 2 as denominated in the style, above.

5. On May 11, 2012, after significant motion filing and brief writing in the Pensacola Case, the parties in the Pensacola case entered into a *JOINT MOTION TO TRANSFER CASE* to this court for consolidation with the Texas Case¹. Thereafter, the Honorable Casey Rodgers, Chief Judge of the United States District Court for the Northern District of Florida, Pensacola

¹*See, Entry N° 24, Progress Docket of the Pensacola Case, denominated Case N° 1 in the style of these pleadings.*

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Division, rendered her order transferring the Pensacola Case to this court².

6. An examination of the pleadings in the Pensacola Case, Case N° 1, *supra*, reveals that the causes of action set forth by the plaintiffs there, Frances Carter Snodgrass Walker and Dorothy Elizabeth Snodgrass Amonette, sound in breach of contract, breach of the standard of care and violation of statute, the removal of corporate trustee and the demand for an accounting, violations of the Texas Deceptive Trade Practices and Consumer Protection Act³.

7. An examination of the pleadings in Houston Case, Case N° 2, *supra*, reveals that the relief sought by Encore Bank, N. A., in that matter is declaratory judgment, approval of final Account, and for judicial discharge.

8. The parties in both of these cases are identical except for Evans S. Amonette, Samuel D. Amonette and Jackson T. Amonette who are the contingent remaindermen of the trusts, and the subject matter is the same: the trusts established by the

²See, Entry N° 27, *Progress Docket of the Pensacola Case, denominated Case N° 1 in the style of these pleadings.*

³*Texas Business & Commerce Code §17.41, et seq.*

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antecedents of Frances Carter Snodgrass Walker and Dorothy Elizabeth Snodgrass Amonette for their benefit and for the benefit of the remaindermen.

9. In point of fact, the issues raised by Encore in its case are compulsory counter-claim issues to those raised by Frances Carter Snodgrass Walker and Dorothy Elizabeth Snodgrass Amonette in their case initial filed in Pensacola.

10. The joint motion of the parties⁴ filed in the United States District Court in the Pensacola Case specifically referred to the transfer of the case to effect the consolidation of these cases⁵. The order rendered by Judge Rodgers specifically noted that the transfer was for the purpose of consolidation⁶.

11. If these two cases are permitted to progress upon their tracks without consolidation, there is a strong possibility of the occurrence of a conflict of judgments between the two

⁴*See, Note 1, supra*

⁵“Motions have been filed in both courts to transfer the actions to the other: the parties have agreed to transfer the case to the Houston Court for consolidation.” *¶3, Joint Motion to Transfer, See Note 1, supra.*

⁶*See, Note 2, supra*

divisions of this court. By the transfer of the Pensacola Case to this court, these two case should be consolidated so that the issues can be properly joined, and a resolution of the issues reached.

Wherefore, FRANCES CARTER SNODGRASS WALKER, DORITHY ELIZABETH SNODGRASS AMONETTE, EVANS S. AMONETTE, SAMUEL D. AMONETTE AND JACKSON T. AMONETTE move, and as appropriate renew their motion to consolidate these cases, and for such other and further relief as may be just and equitable in the premises.

Respectfully submitted

THE LAW OFFICES OF
DAVID LUTHER WOODWARD, P. A.

/s/ *David L. Woodward*

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Certificate of Service

I hereby certify that a true and correct copy hereof has been furnished to

Messrs. Lawrence Keefe, A. Benjamin Gordon, and Ralph Schofield
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2113 Lewis Turner Boulevard, Suite 100
Fort Walton, Florida 32547

Jimmy Walker, Esquire
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Houston, Texas 77002

either by regular United States Mail, or by electronic mail to those parties who have made appearances on the docket of this case and are appropriately equipped to receive such transmission on May 22, 2012.

/s/ *David L. Woodward*

Of Counsel

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